

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DIONISIO MOJICA,

Plaintiff,

-v-

9:17-CV-324  
(DNH/ML)

GEORGE MURPHY, Lieutenant, Great Meadow  
Correctional Facility, formerly known as John  
Murphy; CHARLES SHARROW, Correctional  
Officer, Great Meadow Correctional Facility,  
formerly known as John Sharrow; and C.O. B.  
COSEY, Great Meadow Correctional Facility,  
formerly known as John Doe #1,

Defendants.

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APPEARANCES:

OF COUNSEL:

DIONISIO MOJICA  
Plaintiff pro se  
95-A-2455  
Sullivan Correctional Facility  
Box 116  
Fallsburg, NY 12733

HON. LETITIA JAMES  
Attorney General for the State of New York  
Attorney for Defendants  
The Capitol  
Albany, NY 12224

KEITH J. STARLIN, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

### **DECISION and ORDER**

Pro se plaintiff Dionisio Mojica brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 23, 2020, the Honorable Miroslav Lovric, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment based on failure to exhaust be denied. No objections to the Report-Recommendation were filed. However, on March 4, 2020, plaintiff filed a motion to amend.

Based upon a careful review of entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

With respect to plaintiff's motion to amend, he seeks to "clear up discrepancies [sic] in the defendants [sic] name(s); specific details of the Actions taken and or how the defendants failed to Act." ECF No. 97–1. As with his previous motion to amend (ECF No. 88) which Magistrate Judge Lovric denied, plaintiff's proposed Amended Complaint does not allege any changes to the causes of action. After careful consideration, plaintiff's motion to amend will be denied for the same reasons set forth by Magistrate Judge in addressing plaintiff's prior motion to amend.

Therefore, it is

ORDERED that

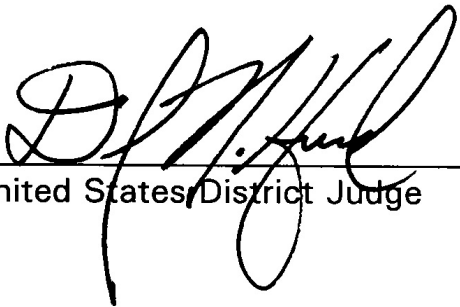
1. Defendants' motion for summary judgment based on failure to exhaust is DENIED;
2. Plaintiff's motion to amend is DENIED;
3. The following claims remain for trial: (1) excessive force against all defendants; and (2) failure to intervene against defendant Murphy;

4. Trial is tentatively scheduled for September 14, 2020 at 9:30 a.m. in Utica, New York. Pre-trial submissions are due on or before August 31, 2020;

5. The parties are reminded that they have the option of referring this case to Magistrate Judge Lovric, pursuant to 28 U.S.C. § 636(c)) and based on his familiarity with the case, but are free to withhold consent without adverse substantive consequences. The parties are directed to advise the Court on or before April 17, 2020 whether or not a consent to a jury trial before him will be executed; and

6. If plaintiff wishes to renew his motion for the appointment of pro bono trial counsel, he must do so within thirty (30) days of the date of this Decision and Order.

IT IS SO ORDERED.

  
United States District Judge

Dated: March 9, 2020  
Utica, New York.